



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET- SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

2005 OCT -6 PM 12:50

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CWA-08-2005-0013

IN THE MATTER OF:


**GIL HAUGAN CONSTRUCTION, INC.,
And BETHANY HOME FOR THE AGED**

RESPONDENT

FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents, Bethany Home for the Aged, is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

October 6, 2005
DATE


Alfred C. Smith
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION VIII
Docket No. CWA-08-2005-0013

In the Matter of:)	
)	
Gil Haugan Construction, Inc., and)	CONSENT AGREEMENT
Bethany Lutheran Home for the Aged,)	
)	
Respondent.)	

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent, Bethany Lutheran Home for the Aged, by their undersigned representatives, hereby consent and agree as follows:

1. On March 18, 2005, Complainant issued a Complaint alleging certain violations of the Clean Water Act ("Act"), § 301 (a), 33 U.S.C. § 1311(a). The Complaint proposed a civil penalty for the alleged violations of the storm water requirements specified in the South Dakota Department of Environment and Natural Resources (SDDENR), General Permit No. SDR-100000 and Respondent's assigned permit no. SDR-10A778.

2. Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies the specific factual allegations of the Complaint.

3. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint, or this Consent Agreement.

4. This Consent Agreement, upon incorporation into a final consent order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under

this agreement. This Consent Agreement contains all terms of the settlement agreed to by the undersigned parties and does not apply in any way to Respondent Gil Haugan Construction, Inc.

5. Respondent consents and agrees that not more than thirty (30) calendar days from the date of a signed final order in this matter. Respondent shall pay a civil penalty in the amount of Five Thousand Dollars (\$5,000.00) in the manner described below in this paragraph:

- a. Payment is due within 30 calendar days from the date written on the Final Consent Order, issued by the Regional Judicial Officer that adopts this Consent Agreement. The date the payment is made is considered to be the date of receipt of the payment at the Mellon Bank described below. Payments must be received by 11:00 a.m. EST to be considered as received that day.
- b. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the this amount, payable to "Treasurer, United States of America," to:

Regular Mail:

Mellon Bank
Lockbox 360859
Pittsburgh, PA 15251-6859

Federal Express, Airborne, or other commercial carrier:

U.S. EPA, 360859
Mellon Client Service Center Room 670
500 Ross Street
Pittsburgh, PA 15262-0001

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA = 021030004
TREAS NYC/CTR/
BNF=/AC-68011008

Copies of the check shall be sent to:

Jennifer Meints, Environmental Engineer
Technical Enforcement Program (8ENF-W-NP)
U.S. EPA Region VIII
999 18th Street, Suite 300
Denver, CO 80202-2466

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region VIII
999 18th Street, Suite 300
Denver, CO 80202-2466

- c. In the event payment is not received by the specified due date, **interest accrues from the date of the final consent order, not the due date**, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (i.e., on the 1st late day, 61 days of interest accrues).
- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 61st day from the date of the final consent order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per year penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 151st day from the date the final consent order is signed). Payments are first applied to accrued interest, penalty and/or handling charge; the balance is then applied to the outstanding principal amount.
- e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.
- f. Respondent further agrees and consents that if Respondent fails to pay the entire penalty amount within 30 days of the date on the final order, the full penalty amount proposed in the Complaint shall become immediately due and owing by Respondent.

6. The penalty specified in paragraph 5, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

7. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with the Clean Water Act and its implementing regulations.

8. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

9. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other Federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this consent Agreement.

10. Pursuant to 33 U.S.C. § 1319(g)(4), on April 18, 2005, public notice was provided of the filing of the Complaint which is the subject of this Consent Agreement.

11. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind the party he/she represents to the terms and conditions of this Consent Agreement.

12. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final consent order.

13. Each party shall bear its own costs and attorney fees in connection with this matter.

14. This Consent Agreement, upon incorporation into a final consent order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.

Date: 10/05/05

By: Eddie A. Seem
for Carol Rushin, Assistant Regional
Administrator, Office of Enforcement
Compliance and Environmental Justice

Date: 10-3-05

By: Alicia N. Hoegh
Alicia N. Hoegh, Enforcement Attorney
Elyana Sutin, Senior Enforcement Attorney
999-18th Street, Suite 300 (ENF-L)
Denver, Colorado 80202-2466

BETHANY LUTHERAN HOME FOR THE
AGED

Date: 9/28/05

By: Duane P. Anderson
Duane Anderson
Christopherson, Bailin & Anderson, LLP
509 South Dakota Avenue
Sioux Falls, South Dakota 57104-6809

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter **GIL HAUGAN CONSTRUCTION, INC., and BETHANY HOME FOR THE AGED, DOCKET NO.: CWA-08-2005-0013** was filed with the Regional Hearing Clerk on October 6, 2005.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Alicia Hoegh, Enforcement Attorney, U. S. EPA – Region 8, 999 18th Street, Suite 300, Denver, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on October 6, 2005, to:

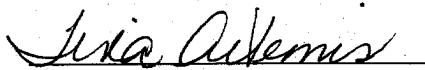
Duane C. Anderson, Esq.
Christopherson, Bailin & Anderson, LLP
509 South Dakota Avenue
Sioux Falls, SD 57104-6809

Brian J. Donahoe
Cutler & Donahoe, LLP
100 N. Phillips Avenue, 9th Floor
Sioux Falls, SD 57104-6725

And pouch mailed to:

Honorable Susan L. Biro
Chief Administrative Law Judge
Office of Administrative Law Judges (1900L)
U. S. Environmental Protection Agency
Arial Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

October 6, 2005


Tina Artemis
Regional Hearing Clerk



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